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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,969	01/24/2001	Dave W. Gordon	2096.00C	2336

7590 04/11/2002

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,969

Applicant(s)

GORDON, DAVE W.

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Claims 1-8 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species or subspecies, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.
2. This application contains claims 1-8 and 14 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bulzomi (5220791) in view of Oatman (4658515) or Latzke (4887368).

Bulzomi shows a foot cover comprising an upper portion (1) with an outer covering (16), a radiant barrier (6), and an inner covering (17), and a bottom panel/sole comprising an outer layer (11), an inner layer (7), and a radiant barrier (11a and 7a) and discusses the use of temperature control footwear to provide insulating and heat retaining properties (see column 1 lines 55-65) substantially as claimed except for the orientation of the radiant barrier layers. Oatman or Latzke teaches orienting radiant

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barrier layers so that they reflect the heat inwardly toward the wearers' foot (see Oatman abstract, last 5 lines or Latzke column 2 lines 55-67). It would have been obvious to orient the radiant barrier layers as taught by Oatman or Latzke so that the layer reflects heat inwardly in the foot cover of Bulzomi to heat the wearer's foot in cold weather as opposed to cooling the foot in warm conditions.

5. Claims 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latzke in view of Bulzomi.

Latzke provides a radiant barrier layer (2) between inner and outer layers (1 and 3) and the use of such to reflect heat inward toward a wearer substantially as claimed except for the exact formation of the element of apparel, i.e. foot cover (note the discussion of foot coverings in column 7 lines 24-25). Bulzomi teaches forming a foot covering having barrier layers incorporated in an upper and sole. It would have been obvious to make a foot covering as taught by Bulzomi with the materials of Latzke to allow the foot to be uniformly warmed.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 9-13 and 15 above, and further in view of Terry.

Bulzomi or Latzke as modified above shows a foot cover substantially as claimed except for an elastic ankle. Terry teaches providing an elastic (30) at the ankle portion of a foot cover. It would have been obvious to provide elastic as taught by Terry in the foot cover of Bulzomi or Latzke as modified above to provide a tighter fit and to prevent heat from exiting and entering the top of the foot cover.

Response to Arguments

7. Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner ____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Valerie Douglas at (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.


Marie Patterson
Primary Examiner
Art Unit 3728